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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,029	10/10/2001	Thomas Jaskiewicz	SMQ-075	7607

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LAHIVE & COCKFIELD, LLP.
28 STATE STREET
BOSTON, MA 02109

EXAMINER

ROBINSON, GRETA LEE

ART UNIT	PAPER NUMBER
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2177

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/975,029

Applicant(s)

JASKIEWICZ, THOMAS

Examiner

Greta L. Robinson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-22 are pending in the present application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1 - 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding independent claim 1, the limitation "**translating** said user data read requests and write requests into **destination read requests and destination write requests** in a manner that is **transparent** to the user" does not appear to be described in the specification nor drawings. The disclosure does describe reading and writing data at page 5 lines 17-23, page 8 lines 11-17; but does not appear to teach a translation of data or that data is transparent to the user. This rejection also applies to independent claim 5. Claim 19 states allocating data transparently; but the Examiner did not see this specific teaching. Claims 1-18 also use the term "**user**" and it has been defined as a file system or database on page 5 lines 16-19 in the disclosure. The

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definition does not seem logical, the term generally is referred to as a client user or server user (i.e. a person at the computer terminal operating the machine). Reference to the term "**user**" as being a file system or database is not clear. Regarding claim 22 the limitation "**wrapping a network storage medium inside a virtual logical unit**" does not appear to be described in the detailed description of the specification. The summary of the invention briefly mentions that the virtual layer wraps a real volume storage inside a virtual volume on page 2 lines 24-25, but there does not appear to be any other detailed description on how this relates to the limitation of claim 22. Claims 2-4, 6-12, 14-18, 20 and 21 are rejected based on dependency.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 5, the following term is vague: "**providing** a plurality of controllers ... providing a virtual interface on aid host... *with said virtual interface, receiving* user data read requests and write requests" [see claim 1 lines 3-9; claim 5 lines 4-8]. It is unclear as to what element is being provided. Also who or what is receiving the read and write requests? Claims 2-4 and 6-12 are rejected based on dependency.

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "user" in claims 1-22 is used by the claim to mean "a file or database", while the accepted meaning is "a person who requires the services of a computing system." The term is indefinite because the specification does not clearly redefine the term.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cork et al. US Patent 6,256,643 B1

Bodamer et al. US Patent 6,226,649 B1

Munroe et al. US Patent 6,493,816 B1

Jacobs et al. US Patent 6,385,643 B1

Johnson et al. US Patent 6,330,709 B1

Dunning et al. *The Virtual Interface Architecture*

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greta L. Robinson whose telephone number is (703) 308-7565. The examiner can normally be reached on Mon.-Fri. 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (703) 305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



GRETA ROBINSON
PRIMARY EXAMINER

Greta Robinson
Primary Examiner
February 6, 2004